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## LIGHTCRAFT (KL) SDN BHD

**v.**

## FORTUNE VALLEY SDN BHD

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HIGH COURT MALAYA, KUALA LUMPUR
TENGKU MAIMUN JC
[SUIT NO: S4-22-254-1999]
25 JUNE 2007

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***CONTRACT:*** *Formation - Concluded contract - Whether new contract existed between developer and sub-contractor after departure of main-contractor - Correspondence and surrounding circumstances to be examined to determine whether a contract exists - Developer had agreed to make payments to sub-contractor directly - Whether developer now estopped from claiming otherwise*

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The plaintiff claimed against the defendant for the sum of RM314,805.50 being the monies due for the supply and delivery of light fittings and fixtures for a project known as Avillion Resort in Port Dickson (the project). The defendant was the developer for the project and it had appointed Seloga Jaya Sdn Bhd as the main contractor for the project.

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Seloga Jaya Sdn Bhd had awarded the plaintiff the sub-contract for the supply and delivery of light fittings and fixtures at the cost of RM700,000. Seloga Jaya Sdn Bhd later terminated its contract with the defendant and the plaintiff. Thereupon the plaintiff carried on with the sub-contract works for the supply and delivery of the light fittings and fixtures for the project. On 22 May 1997 the defendant issued a

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Payment Certificate No 1 which stated the amount due to the plaintiff as RM365,000. However, later the defendant claimed that the contract for the supply and delivery of light fittings and fixtures was between the plaintiff and Seloga Jaya Sdn Bhd and the defendant was not a party to the contract. The defendant contended that the plaintiff had to claim the

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monies for the value of work which it carried out from the main contractor, Seloga Jaya Sdn Bhd and not the defendant.

**Held (entering judgment for the plaintiff):**

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**(1)** After the termination of the contract with Seloga Jaya, the plaintiff requested the defendant as the employer to make direct payments to the plaintiff for the works that had been carried out but which had not been paid by Seloga Jaya. Looking at the correspondence and the surrounding circumstances, there was a contract between the parties. (paras 10 & 11)

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**(2)** All the correspondence also showed that the defendant had wanted to make payments to the plaintiff directly. Therefore, the defendant was now estopped from saying that they were not liable to pay the plaintiff when the defendant had represented that payments will be made to the plaintiff. (para 16)

**Case(s) referred to:**

*Chooi Siew Cheong v. Lucky Height Development Sdn Bhd [1995] 2 CLJ 11 FC* ***(refd)***

*For the plaintiff - Jagjit Kaur; M/s Nazri Aziz & Wong*
*For the defendant - Sanjay Mohanansundram; M/s Lee Hishammuddin Allen & Gledhill*

*Reported by Amutha Suppayah*

## JUDGMENT

**Tengku Maimun JC:**

**[1]** On 24 January 2007 when this matter came up for trial, both learned counsel for the plaintiff and the defendant agreed that witnesses be dispensed with and parties proceeded by filing written submission on the issue of liability based on the documents in Part A and B of the Common Bundle of Documents (CBD) which existence and contents have been agreed upon.

**[2]** The plaintiff's claim against the defendant is for the sum of RM314,805.50 being the monies due for the supply and delivery of light fittings and fixtures for a project known as Avillion Resort in Port Dickson (the project). The defendant is the developer for the project and it had appointed Seloga Jaya Sdn Bhd as the main contractor for the project. Lumino Design Sdn Bhd is the main contractor for the supply, delivery and installation of light fittings and fixtures. On 22 January 1996 the defendant wrote to A & A Rekarancang Sdn Bhd, the architect for the project stating 'We are pleased to advise on our acceptance of Messrs Lightcraft (KL) Sdn Bhd offer for the abovementioned sub-contract package at RM700,000 …'. This was followed by a letter dated 12 February 1996 from Seloga Jaya Sdn Bhd to the plaintiff awarding the subcontract for the supply and delivery of light fittings and fixtures to the plaintiff at the cost of RM700,000. By a letter dated 20 January

A 1997 to the defendant, the plaintiff submitted a revised costing for the amount of RM844,432.51. Lumino Design Sdn Bhd *vide* a letter dated 6 April 1997 advised the defendant that the amount due to the plaintiff for progress claim No. 1 was RM550,949.12.

B **[3]** Seloga Jaya Sdn Bhd terminated its contract with the defendant and the plaintiff on 29 April 1997 and 2 May 1997 respectively. Thereupon the plaintiff carried on with the sub-contract works for the supply and delivery of the light fittings and fixtures for the project.

**[4]** On 2 July 1997 the plaintiff wrote to the defendant as follows:

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> We are the Nominated Subcontractor (NSC) to Seloga Jaya Sdn Bhd the main contractor, for the supply, installation of light fitting for the construction of the abovementioned project.
>
> Messrs Seloga Jaya Sdn Bhd as the main contractor has declared his
> D intention to terminate the main contract, as such we have requested Messrs Fortune Valley Sdn Bhd for direct payment from Messrs Fortune Valley Sdn Bhd as Employer.
>
> In consideration of Messrs Fortune Valley Sdn Bhd making direct payment to us, we hereby irrevocably undertake to Messrs Fortune
> E Valley Sdn Bhd that we shall repay to Messrs Fortune Valley Sdn Bhd for all monies paid directly to us by Messrs Fortune Valley Sdn Bhd in respect of payments due to us as NSC to Messrs Seloga Jaya Sdn Bhd in the event that the payments are not being legitimately due to us from Messrs Seloga Jaya Sdn Bhd. We undertake to make payment to you immediately upon your demand and in the event that we fail to
> F repay you, such monies shall be treated as a debit due from us to you without the need for further proof or substantiation from you.
>
> We hereby confirm our receipt of RM365,000.00 ... from Messrs Fortune Valley Sdn Bhd 2nd May 1997.

G **[5]** On 22 May 1997 the defendant issued a Payment Certificate No 1 which states the amount due to the plaintiff as RM365,000 and the Payment Certificate also bears the following words: 'I/We hereby certified payment of the sum stated above for the Supply, Delivery and Installation of Light Fittings' (p. 59 CBD). On 6 June 1997 the plaintiff
H wrote to the defendant stating that 'We are agreeable to the certificate payment of RM365,000 for our first payment' (p. 6 CBD).

**[6]** On 15 December 1997 Lumino Design wrote to the defendant which reads:

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> Referred to the claim submitted by Lightcraft (KL) Sdn Bhd dated 20th October 1997, we are pleased to certify the following payment for your further action.

| | |
|---|---|
| Revised contract sum: | RM815,725.50 |
| Less V.O. - Bedside and desk table lamp | |
| Pangkin table lamp | RM135,920.00 |
| Total amount certified up to date | RM679,805.50 |
| Less 5% retention | RM 33,990.28 |
| RM645,815.22 | |
| Less amount received till date | RM365,000.00 |
| Amount due for this final claim | RM280,815.22 |
| (pg 67 CBD) | |

**[7]** The amount claimed by the plaintiff is for RM280,815.22 + RM33,990.28 which amounts to RM314,805.50.

**[8]** The learned counsel for the defendant in his written submission argued that the contract for the supply and delivery of light fittings and fixtures is between the plaintiff and Seloga Jaya Sdn Bhd and the defendant is not a party to the contract. Although it was not disputed that the plaintiff had carried out certain works in accordance with the contract, learned counsel for the defendant submitted that there can also be no dispute that the plaintiff has to claim the monies for the value of work which it carried out from the main contractor, Seloga Jaya Sdn Bhd and not the defendant.

**[9]** Learned counsel further argued that the payment of RM365,000 by the defendant on the terms of the letter dated 2 July 1997 (p. 8 CBD) was only an advance and the letter doesn't constitute a contract. Neither is there any obligation on the defendant to pay the plaintiff any monies over and above the RM365,000. Learned counsel further argued that in fact, by the terms of the letter the plaintiff agreed to repay the defendant the sum of RM365,000.

**[10]** I find that the letter dated 2 July 1997 is very clear in its terms ie after the termination of the contract with Seloga Jaya, the plaintiff requested the defendant as the employer to make direct payments to the plaintiff for the works that had been carried out but which had not been paid by Seloga Jaya and that the obligation to indemnify the defendant will arise when the monies paid by the defendant is ultimately shown to be not legitimately due to the plaintiff. Therefore the argument of the learned counsel for the defendant that the payment of the RM365,000

was an advance from the defendant and that the plaintiff should refund the defendant that amount is unmeritorious given the clear meaning of the letter.

**[11]** Learned counsel for the defendant had also argued that the single letter of 2 July 1997 cannot form the basis of the contract between the plaintiff and the defendant. Indeed I agree with learned counsel, except that in the instant case the court is looking not just at the letter but the surrounding circumstances in coming to the conclusion that there was a contract between the parties. In doing so I am guided by the words of Chong Siew Fai FCJ (as he then was) in *Chooi Siew Cheong v. Lucky Height Development Sdn Bhd* [1995] 2 CLJ 11 at p. 20:

> We were of the view that in the construction of an agreement, it would not be right to look at one clause in isolation. All the other relevant clauses in the joint venture agreement and in the trilateral agreement must also be considered in the context of the whole of the transaction. **Regard must also be had to any surrounding circumstances, if any, which might legitimately be taken into consideration**. (emphasis added).

**[12]** Although it was contended that the defendant had nothing to do with the contract which was entered into between the plaintiff and Seloga Jaya Sdn Bhd, the surrounding circumstances show otherwise. On 17 June 1997 ie, after the contract with Seloga Jaya Sdn Bhd was terminated, the defendant wrote a memo to the plaintiff directing the plaintiff to rectify the wiring works, failing which the defendant states that they will engage a sub-contractor to carry out the works and that any cost incurred shall be defrayed from any monies due to the plaintiff (p. 174 CBD).

**[13]** On 25 September 1997 the defendant wrote to Lumino Design (M) Sdn Bhd stating that "Your evaluation and confirmation of final account on total lighting work and dimmer installation is still awaited. Please kindly have them finalise not later than 31 October 1997." This letter was copied to the plaintiff (p. 181 CBD).

**[14]** On 29 October 1997 the defendant wrote to Lumino Design and the letter states *inter alia*:

> Lightcraft (KL) Sdn Bhd latest claim submission dated 20th October 1997 refers.
>
> As previously discussed, please kindly evaluale (sic) and advise soonest possible on the following:
>
> a) Final account
>
> b) Uncompleted work as per previous comments

> … Please do make all recommendation directly to Fortune Valley Sdn Bhd and only copy to Lightcraft (KL) Sdn Bhd ... (p. 182 CBD).

**[15]** On 18 November 1997 the defendant wrote to the plaintiff in the following terms:

> We have been advised by the operator that the compound lighting frequently trips when rained.
>
> You are hereby instructed to rectify the above defect and if so required to replace all faulty junction boxes, connections and fittings not later than 25th November 1997, failing which we shall engage others to rectify the same on your behalf and debit your account accordingly. (pg 183 CBD).

**[16]** All these letters pointed to only one conclusion, ie, that the defendant has wanted to make payments to the plaintiff directly which is consistent with the letter dated 2 July 1997. In my view the defendant is now estoppel from saying that they are not liable to pay the plaintiff when the defendant has represented that payments will be made to the plaintiff.

**[17]** If the defendant had no intention to pay the plaintiff then there is no reason for the defendant to request Lumino Design Sdn Bhd to confirm the accounts of the plaintiff. Similarly there would be no reason for the defendant to inform the plaintiff that the accounts will be debited for the rectification works if the defendant is not settling the accounts of the plaintiff.

**[18]** The defendant has not shown that the sum claimed by the plaintiff is not legitimately due to the plaintiff given the certification by Lumino Design Sdn Bhd on 15 Dcember 1997 pursuant to the defendant's own request dated 29 October 1997.

**[19]** In the light of the defendant's request and Lumino Design's certification of the plaintiff's claim and in the absence of any other evidence to the contrary, it is my view that the defendant's liability has been established. Judgment is therefore entered for the plaintiff for RM314,805.50 with interest and costs as prayed.